S.B.CIVIL MISC.APPEAL NO.1617/06

Rama & Ors. vs. Smt. Dharmi Bai & Ors.

DATE OF ORDER : 29/1/2007

HON'BLE SHRI RAJESH BALIA, J.

Mr.B.R.Mehta, for the appellants.

Heard learned counsel for the appellants. No one appeared for the respondents inspite of service.

This appeal is directed against the order of learned District Judge, Sirohi dated 15/9/2006, allowing the appeal filed by the present appellants and setting aside the decree passed by the trial court.

The decree has been set aside by the lower appellate authority solely on the ground that statement given on behalf of plaintiffs by their power of attorney holder, who has not deposed on personal knowledge of facts, cannot be substituted as the plaintiffs' statement and, therefore, decree could not be founded on the statement of power of attorney holder. However, considering the procedural defect, inasmuch as the plaintiffs have been misled due to the fact that power of attorney has been examined and their personal appearance may not be not

necessary, the learned District Judge, Sirohi instead of dismissing the suit itself has remanded the matter back to the trial court for giving one opportunity to the plaintiffs to appear in witness box and prove their case.

In the aforesaid circumstances, I am of the opinion that it cannot be said that learned District Judge, Sirohi has committed any error which need be corrected by this Court. In the circumstances, giving of opportunity to the plaintiffs, whose evidence has not been taken on procedural grounds cannot be said to be contrary to law or not within the ambit of the power of appellate court.

Accordingly, appeal fails and is hereby dismissed. The interim order also stands vacated.

(RAJESH BALIA), J.

Pankaj Baweja.